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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,757	10/15/2001	Dianne D. Mueller	US20010115	3965

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WHIRLPOOL PATENTS COMPANY - MD 0750
500 RENAISSANCE DRIVE - SUITE 102
ST. JOSEPH, MI 49085

EXAMINER
CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
3743	9

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/977,757	Mueller et al.
Examiner	**Art Unit**
Ljiljana V. Ciric LVC	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *May 27, 2003*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above, claim(s) *19-37* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-18* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *Oct 15, 2001* is/are a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). *4,5,6*
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Election/Restriction

1. Applicant's election of the species directed to the method of operating a refrigerated oven to cook a food as described in paragraphs [0010] through [0016] and readable on claims 1 through 18 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 19 through 37 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected species or inventions, there being no allowable generic or linking claim. Election was made without proper traverse in Paper No. 8, as noted above.

Requirement for Information

3. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

4. In response to this requirement, please provide the names of any products or services that have incorporated the claimed subject matter.

5. In response to this requirement, please provide copies of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter of the elected first species of the instant invention.

6. In response to this requirement, please provide a copy of EP Application No. 02 02 2259 which is the subject of the European Search Report dated January 21, 2003 listed on the Information Disclosure Statement filed on February 24, 2003, Paper No. 6.

7. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

8. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

9. This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

Specification

10. The abstract of the disclosure is objected to because it does not concisely and clearly summarize the steps which characterize the elected inventive method. Correction is required. See MPEP § 608.01(b).

11. The disclosure is objected to because of the following informalities: the last sentence of paragraph [0006] does not correctly characterize what the *Filipowski* patent does and does not disclose, and thus constitutes a misrepresentation of the previously issued *Filipowski* patent. For example, it is a misstatement that the *Filipowski* patent "does not address maintaining the cooked food at a temperature suitable for serving upon completion of the bake cycle [see column 10, lines 57-63 of *Filipowski*].

Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the

explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 8 recites the broad recitation of two cooking cycle parameters, and the claim also recites the two cooking cycle parameters as being an End Time corresponding to the time of day that step B is to be completed and a Bake Time corresponding to the length of time for cooking the food item which is the narrower statement of the range/limitation.

Claim Rejections - 35 U.S.C. § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1 through 18 are rejected under 35 U.S.C. 102(a) as being anticipated by

Richard Babyak's "Getting Connected: Network News", posted on the internet on August 16, 2000. This article discloses that the instant invention was made public on or before August 16, 2000 by Whirlpool Corporation.

16. Alternately, claims 1 through 18 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. According to Richard Babyak's "Getting Connected: Network News", posted on the internet on August 16, 2000, the instant invention appears to have been made public by Whirlpool Corporation before October 15, 2000.

17. An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: (a) On which date did the public announcement relating to the instant invention as cited in Richard Babyak's "Getting Connected: Network News" occur? (b) Which other public announcements and/or press releases were made in connection with the instant invention? When? To which audiences? (C) When were the prototypes mentioned in Richard Babyak's "Getting Connected: Network News" first assembled? When did the prototype testing begin? Who tested the prototypes and how? How and when were the prototypes disposed of? (d) At which trade shows were prototypes or concept appliances related to the instant invention displayed? When were these trade shows, if any? Was the use of the prototypes or concept appliances demonstrated at the trade shows? Which brochures were made available to the public at the trade shows? Copies of the latter are requested. (e) Where else

(other than at trade shows), when, and for which audiences were demonstrations of models or prototypes of the instant invention conducted?

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

Claim Rejections - 35 U.S.C. § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. Claims 1 through 7 and 10 through 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Clark et al.(of record).*

Clark et al. discloses the inventive method essentially as claimed, including operating a pre-programmable refrigerated oven such that food is selectively cooked, cooled, and/or warmed therein using a remote control, as needed. While Clark et al. suggests that the initiation of the cooling step be based on the temperature, it does not specify that this cooling necessarily be delayed until the cooking temperature cavity is below a predetermined threshold temperature. Nevertheless, it is known in the art of cooking and food preparation, and suggested by *Clark et al.*, that warm foods need to be kept above about 170 degrees Fahrenheit in order to prevent spoilage at warm/hot temperatures, and that cold foods need to be kept below about 45 degrees

Fahrenheit in order to prevent spoilage at cool/cold temperatures. See column 8, lines 44-48, for example. Given this, and given that energy conservation is a consumer priority, it would have been obvious to one skilled in the art at the time of invention to modify the process disclosed by *Clark et al.* such that cooling of warm foods stored in the inventive refrigerator oven NOT be initiated until the temperature of the warm foods drops below the safe warm/hot temperature of about 170 or 175 degrees Fahrenheit corresponding to the "predetermined threshold temperature" as recited in base claim 1 in order to keep the food from spoiling without expending energy unnecessarily to cool the food until it needs to be cooled to prevent spoilage.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sun's press release "Sun Microsystems and Whirlpool Corporation Team Up to Build Networked Home Solutions", dated January 6, 2000, and Planet Save.Com's article on "Future Homes", dated March 4, 2002, each discloses remote controlled appliances and methods of using the same.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

10 LVC 8/10/03

August 7, 2003

LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3743